



7020-02

INTERNATIONAL TRADE COMMISSION

Investigation No. 337-TA-976

Certain Woven Textile Fabrics and Products Containing Same

Commission Determination Not to Review an Initial Determination Finding a Violation of Section 337; Request for Written Submissions on Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination (“ID”) (Order No. 21) issued by the presiding administrative law judge (“ALJ”) on November 10, 2016, granting summary determination that one defaulting respondent has violated section 337 of the Tariff Act of 1930, as amended. The Commission requests written submissions, under the schedule set forth below, on remedy, the public interest, and bonding.

FOR FURTHER INFORMATION CONTACT: Sidney A. Rosenzweig, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <https://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. Hearing-impaired persons are

advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on December 18, 2015, based on a supplemented and twice-amended complaint filed by AAVN, Inc. of Richardson, Texas ("AAVN"). 80 FR 79094 (December 18, 2015). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain woven textile fabrics and products containing same, by reason of infringement of claims 1-7 of U.S. Patent No. 9,131,790 ("the '790 patent") and/or by reason of false advertising. The notice of investigation named fifteen respondents. In the course of the investigation, fourteen of the respondents were terminated from the investigation based upon settlement agreement or consent order. Remaining is Pradip Overseas Ltd. of Ahmedabad, India ("Pradip").

In the complaint, AAVN accused Pradip of false advertising, specifically alleging that Pradip misrepresented the thread count of sheets manufactured in India, imported into the United States, and sold in United States department stores. Second Am. Compl. ¶¶ 39-41, 80 (Nov. 12, 2015); *id.* at Ex. 46 ("800 Thread Count" sheets measured at 252.7 threads). Pradip expressly defaulted. In particular, although Pradip responded to the complaint, Pradip later terminated its relationship with its attorneys and represented that it would not participate in the remainder of the investigation. *See* Order No. 14 at 1 (Apr. 19, 2016).

On September 2, 2016, AAVN moved for leave to file a summary determination motion. The summary determination motion that was appended argued, *inter alia*, that Pradip had violated section 337 by falsely advertising the thread count of its imported sheets, that the false advertising was deceptive, material, and injurious to AAVN. AAVN sought a general exclusion

order and 100 percent bond during the Presidential review period. *See* 19 U.S.C. 1337(d)(2), (j)(3). On September 15, 2016, the Commission investigative attorney responded in support of the motion for leave and the accompanying summary determination motion including its proposed relief.

On November 10, 2016, the ALJ granted the motion for summary determination as the subject ID (Order No. 21). The ALJ found that AAVN had shown a violation of section 337 by reason of false advertising under section 43 of the Lanham Act, 15 U.S.C. 1125(a)(1)(B). Order No. 21 at 7-9, 13-15. As to remedy, citing 19 U.S.C. 1337(d)(2), which sets forth the test for issuance of a general exclusion order, *id.* at 16, the ALJ found that “the evidence shows a widespread pattern of violation of Section 337,” *id.* at 17. The ALJ also found that “the evidence shows that it is difficult to identify the source and manufacturers of the falsely advertised products,” because “U.S. retailers fail to identify the manufacturer, importer or seller of the textile products at the point of sale.” *Id.* at 18. Nor do import records “reveal the names of the original manufacturers of the materials used to construct the imported products.” *Id.* Accordingly, the ALJ found “that the evidence shows that it is difficult, if not impossible, to identify the sources of the falsely advertised goods.” *Id.* Based on these findings the ALJ recommended the issuance of a general exclusion order. *Id.* In the alternative, the ALJ recommended the issuance of a limited exclusion order. *Id.* at 19. The ALJ recommended that bond be set at 100 percent of the entered value of the falsely advertised products. *Id.*

No petitions for review of the ID were filed. The Commission has determined not to review the ID.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s)

being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. See Presidential Memorandum of July 21, 2005, 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainant is further requested to state the HTSUS subheadings under which the accused products are imported, and provide identification information for all known importers of the subject articles.

Written submissions and proposed remedial orders must be filed no later than close of business on January 6, 2017. Reply submissions, if any, must be filed no later than the close of business on January 13, 2017. Such submissions should address the ALJ's recommended determinations on remedy and bonding which were made in Order No. 21. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above and submit 8 true paper copies to the Office of the Secretary by noon the next day pursuant to section 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the investigation number ("Inv. No. 337-TA 976") in a prominent place on the cover page and/or the first page. (See Handbook for Electronic Filing Procedures, https://www.usitc.gov/secretary/fed_reg_notices/rules/handbook_on_electronic_filing.pdf).

Persons with questions regarding filing should contact the Secretary ((202) 205-2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. See 19 CFR 201.6. Documents for which confidential treatment by the Commission

is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes (all contract personnel will sign appropriate nondisclosure agreements). All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.

The authority for the Commission's determinations is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR Part 210).

By order of the Commission.

Lisa R. Barton
Secretary to the Commission

Issued: December 20, 2016

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